

Nicholas E. Wheeler, OSB No. 044491  
[nwheeler@cosgravelaw.com](mailto:nwheeler@cosgravelaw.com)  
COSGRAVE VERGEER KESTER LLP  
900 SW Fifth Avenue, 24<sup>th</sup> Floor  
Portland, Oregon 97204  
Telephone: (503) 323-9000  
Facsimile: (503) 323-9019

Attorney for Plaintiff Smith's Consumer Products, Inc.

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

SMITH'S CONSUMER PRODUCTS, INC.,

Plaintiff,

v.

THE GOURMET MAN, LLC, d/b/a BBQ  
NATION,

Defendants.

Case No.

**COMPLAINT FOR DESIGN PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

COMES NOW Plaintiff, Smith's Consumer Products, Inc., for its complaint against  
Defendant, The Gourmet Man, LLC, states:

**PARTIES**

1. At all times relevant, Plaintiff Smith's Consumer Products, Inc. (hereinafter "Smith's"), was and is a duly organized and existing Delaware corporation with its principal place of business in Hot Springs, Arkansas.

2. At all times relevant, Defendant The Gourmet Man, LLC (hereinafter "The Gourmet Man"), was and is a duly organized Oregon limited liability company with its principal place of business in Canby, Oregon. The Gourmet Man does business as BBQ Nation. The

Gourmet Man can be served with this Complaint through its registered agent, Mitchie Graf, at 8400 S. Schneider Road, Canby, Oregon 97013.

### **JURISDICTION AND VENUE**

3. This is an action for design patent infringement. The Court has subject matter jurisdiction over the design patent infringement claim pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over The Gourmet Man because it does substantial business in this forum, including regularly doing and soliciting business in this District, deriving substantial revenue from goods provided to individuals in this District, and selling and offering for sale infringing goods in this District.

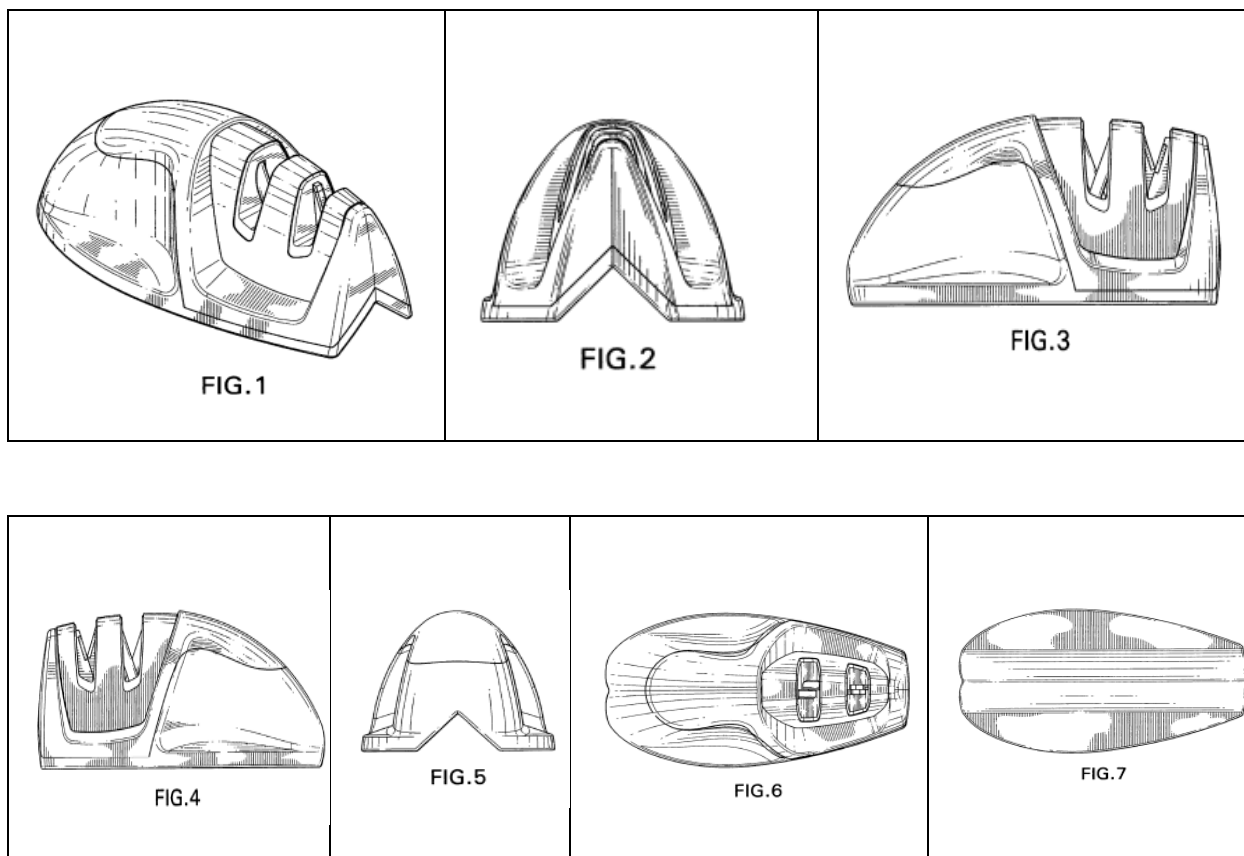
5. Venue is proper in this District pursuant to 28 U.S.C. § 1400(b) because The Gourmet Man resides in this District, has a regular and established place of business in this District, and acts of infringement have occurred in this District.

### **THE ASSERTED PATENT**

6. On March 3, 2009, U.S. Patent No. D587,550 (“the ‘550 Patent”), entitled “Two Step Knife Sharpener,” was issued by the U.S. Patent and Trademark Office. A true and correct copy of the ‘550 Patent is attached as Exhibit A.

7. Smith’s is the owner by assignment of all right, title, and interest in and to the ‘550 Patent.

8. The ‘550 Patent discloses and claims the non-functional ornamental design for a two-step knife sharpener, which is described and shown from multiple perspectives in FIGS. 1-7, reproduced below.



9. Smith's sells knife sharpeners that embody the patented design of the '550 Patent through its website and in big box retail stores.

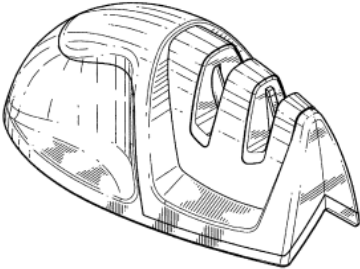
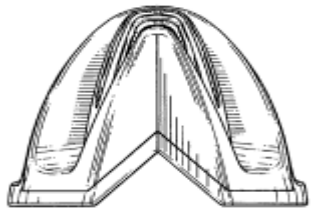


10. Smith's marks its knife sharpeners with the patent number of the '550 Patent via its virtual marking webpage, <https://smithsproducts.com/patents>.





### **THE INFRINGING PRODUCT**


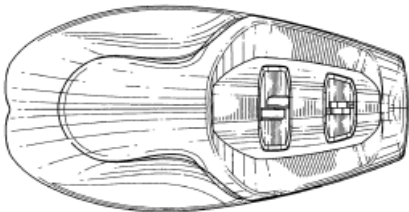


11. The Gourmet Man has made, imported, offered for sale, and/or sold knife sharpeners referred to as the BBQ Nation Compact Knife Sharpener (hereinafter, "the BBQ Nation Knife Sharpener"). For example, The Gourmet Man has offered for sale and sold, and continues to offer for sale and sell, the BBQ Nation Knife Sharpener on its website, [www.bbqnation.net](http://www.bbqnation.net).

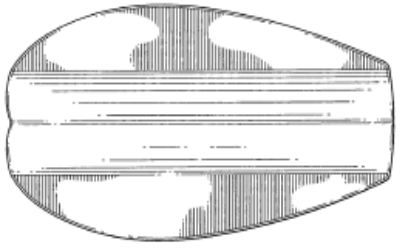

12. The BBQ Nation Knife Sharpener is identical to or substantially the same as the knife sharpener design covered by the ‘550 Patent.

13. Below is a comparison between the figures of the ‘550 Patent and the BBQ Nation Knife Sharpener:

<p><b>‘550 Patent</b></p>	 <p>FIG. 1</p>	 <p>FIG. 2</p>
<p><b>BBQ Nation Knife Sharpener</b></p>		

<b>‘550 Patent</b>	 <p>FIG. 3</p>	 <p>FIG. 4</p>
<b>BBQ Nation Knife Sharpener</b>		

<b>‘550 Patent</b>	 <p>FIG. 5</p>	 <p>FIG. 6</p>
<b>BBQ Nation Knife Sharpener</b>		

<p><b>‘550 Patent</b></p>	 <p>FIG. 7</p>
<p><b>BBQ Nation Knife Sharpener</b></p>	

### **COUNT I – DESIGN PATENT INFRINGEMENT**

14. Smith’s adopts, realleges and incorporates all of the allegations and facts stated in Paragraphs 1-13 of this Complaint.

15. The Gourmet Man has made, imported, offered for sale, and/or sold the BBQ Nation Knife Sharpener that embodies the patented design of the ‘550 Patent in violation of Smith’s rights.

16. The BBQ Nation Knife Sharpener is identical to or substantially the same as the knife sharpener design covered by the ‘550 Patent.

17. In the eye of the ordinary observer, giving attention as purchasers of knife sharpeners usually give, the resemblance between the design of the BBQ Nation Knife Sharpener and the patented design of the ‘550 Patent is such as to deceive the ordinary observer and cause

an ordinary observer to purchase the BBQ Nation Knife Sharpener supposing it to be Smith's knife sharpener and the design set forth in the '550 Patent.

18. The Gourmet Man was given notice of the '550 Patent and its infringement of the '550 Patent via a letter dated November 5, 2021. The Gourmet Man did not respond to the letter.

19. Despite its full knowledge of Smith's exclusive rights to the knife sharpener design covered by the '550 Patent, The Gourmet Man has continued to make, import, offer to sell, and/or sell the BBQ Nation Knife Sharpener. The Gourmet Man's infringement of the '550 Patent therefore is willful and deliberate.

WHEREFORE, Plaintiff Smith's Consumer Products, Inc., prays for relief, as follows:

A. A judgment that The Gourmet Man has infringed the claim of the '550 Patent and that such infringement was willful.

B. An award of The Gourmet Man's profits resulting from The Gourmet Man's infringement of the '550 patent under 35 U.S.C. § 289.

C. An award of actual damages, including all pre-judgment and post-judgment interest at the maximum rate permitted by law.

D. An award of treble damages under 35 U.S.C. § 284 based on The Gourmet Man's willful infringement.

E. An award of costs and attorneys' fees under 35 U.S.C. § 285; and

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F. Such further relief as this Court deems proper.

**JURY DEMAND**

COMES NOW Plaintiff Smith's Consumer Products, Inc. by and through their attorneys, hereby demands trial by jury on all issues so triable.

DATED: April 7, 2022

COSGRAVE VERGEER KESTER LLP

*s/ Nicholas E. Wheeler*

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Nicholas E. Wheeler, OSB No. 044491

[nwheeler@cosgravelaw.com](mailto:nwheeler@cosgravelaw.com)

Telephone: 503-323-9000

Facsimile: 503-323-9019

Attorney for Plaintiff Smith's Consumer Products,  
Inc.